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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 19, 1993

94-11

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Louisiana CGSA, Inc. - Reply to United
States Cellular Corporation Reply

Dear Ms. Searcy:

Enclosed for filing on behalf of Louisiana CGSA, Inc.
are an original and four copies of its Reply to the Reply of
United States Cellular Corporation, filed March 10, 1993.

Please contact us should you have any questions
regarding this filing.

Sincerely,

WILKINSON, BARKER, KNAUER & QUINN



By: L. Andrew Tollin

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Petition of United States Cellular
Corporation to Delete or Nullify the Effect
of Footnote Three

To: The Commission

REPLY

Louisiana CGSA, Inc. ("LCGSA"), by its attorneys,
hereby responds to the Reply to Opposition ("USCC Reply") filed
by United States Cellular Corporation ("USCC") on March 10,
1993. ^{1/} For the reasons which follow, LCGSA reiterates that the
USCC Petition to Delete or Nullify the Effect of Footnote Three
("Petition") is defective and should be returned without consid-
eration.

LCGSA took the position, in its Motion for the Return
of the Petition, that USCC's Petition should not be considered
because:

- USCC had a full opportunity to request reconsideration of the footnote three ruling within 30 days after the June 25, 1992 release of the La Star Decision and instead chose to appeal the Commission's Decision;
- USCC had a full opportunity to request reconsideration of conditions the FCC has placed on USCC application grants based on the pendency of La Star footnote three character issues, yet it failed to do so without explanation;

^{1/} The USCC Reply responds to "various pleadings" filed in opposition to its Petition, including LCGSA's Motion for the Return of USCC's Petition To Delete or Nullify the Effect of Footnote 3 (filed Feb. 18, 1993). Under Section 1.45(b) of the Rules, replies may be filed by the person who filed the original pleading. This Reply is timely under Sections 1.45 and 1.4 of the Rules.

- USCC did in fact respond on the merits to the La Star footnote three character issue in three different proceedings now pending before the Commission; and
- USCC has impermissibly attempted to proffer evidence relating to the wire-line control issue years after the close of the record.

Rather than directly disputing these points, USCC re-characterizes its Petition to delete or nullify footnote three as an urgent plea to the Commission make an "assessment of the weight if any to accord the La Star case in other proceedings." ^{2/} It also offers the following excuses for raising the footnote three issue at this late date in the La Star docket: "[t]he potential adverse effect of the existence of Footnote 3 was not anticipated by USCC or, we submit, by the Commission, until substantially after the time for reconsideration of the La Star decision had passed" and that the course the Commission has taken in conditioning USCC application grants on the outcome of footnote 3 is "entirely unprecedented." ^{3/}

First, if USCC's real problem is with the condition being placed on its FCC grants, then why has it offered no explanation for its failure to seek reconsideration of those conditioned grants?

Second, contrary to USCC's claimed surprise in the matter, La Star footnote three plainly states that the Commission is deferring a ruling on the character matter until it is raised in other proceedings. Revisitation of the matter was specifically

^{2/} USCC Reply at 3.

^{3/} USCC Reply at 4-5.

invited and thus a proliferation of footnote 3 cases was completely foreseeable. ^{4/} As expressly recognized by USCC, the issue has been raised in other proceedings and the FCC now has the matter directly before it. Thus, the issue concerning the weight to accord the La Star case in other proceedings will soon be resolved, as USCC has requested.

Third, USCC's statement that conditioning grants on the resolution of a pending character question is "entirely unprecedented" and that it is unaware of any "other cellular case . . . in which disqualification in one market has spilled over into other proceedings" ^{5/} is nothing short of remarkable. In fact, the Commission has a history of conditioning cellular authorizations on the outcome of other proceedings which implicate the character of cellular licensees. For example, in the Advanced

^{4/} Even before the character issue was raised in the La Star case, the Commission warned USCC:

[W]e recognize that USCC and its parent, TDS, hold numerous other Commission licenses. Therefore, we agree that any Commission determination that USCC, or its parent TDS, controls La Star may be raised in other, subsequent proceedings. La Star, 6 FCC Rcd. 1245 (1991).

In fact, USCC itself recognized that an adverse determination on the wireline eligibility issue could affect its interests in other proceedings. As the Commission stated in making USCC a party:

USCC asserts that its actions are relevant to the issue of control of La Star, and argues that any determination that USCC, as the sole owner of Star, has improperly assumed control of La Star could adversely affect USCC in other proceedings.

Id.

^{5/} Id. at 5, n.3.

Mobile Phone Service, Inc. ^{6/} hearing designation order for the Chicago, Illinois MSA, the Commission specifically:

reserve[d] the right to reexamine and reconsider the qualifications of Cellular Mobile Systems of Illinois, Inc. to hold a cellular license should ASD be resolved adversely to any of CMS's affiliate or parent companies or to any of their principals. ^{7/}

The Commission directed the ALJ "in this and other cellular proceedings in which Graphic's affiliates are involved to condition any award to take account of any action the Commission may take" in the ongoing ASD character proceeding. ^{8/} Pursuant to the Commission's directive, Graphic's affiliated cellular company's licenses were so conditioned. ^{9/}

USCC's string cite to support its proposition that the Commission does not condition cellular authorizations based on

^{6/} 91 FCC 2d 512 (1982) ("Advanced Mobile") (MO&O granting the application for the wireline Block B frequencies in the Chicago, Illinois MSA and designating applications for Block A frequencies for hearing.) (Subsequent history omitted).

^{7/} Id. at 520 n.19. CMS was a subsidiary of Graphic Scanning Corporation ("Graphic"). Graphic became enmeshed in a character proceeding at the FCC involving the allegation that fraudulent paging applications had been filed with the FCC through various "strawmen." The ALJ, in fact, found that Graphic and its affiliates were not qualified on character grounds, but since CMS never won a cellular license, there was no occasion to revisit the impact of the Graphic character finding on the company's eligibility to hold a cellular authorization. See A.S.D. Answer Service, Inc., CC Docket Nos. 82-587, 588, 589, 590, FCC 85D-3 (ALJ, January 9, 1985) (Initial Decision); A.S.D. Answer Service, Inc., 1 FCC Rcd. 753 (1986), modified, 3 FCC Rcd. 4213 (1988).

^{8/} Advanced Mobile, supra, 91 FCC 2d at 520 n.19.

^{9/} See Mobilfone of Northeast Pennsylvania, Inc., MO&O, Mimeo 3506 (CCB March 29, 1985) at ¶ 5; Cellular Mobile Systems of Indiana, Inc., 93 FCC 2d 26, 29-30 (1983); Southern Ohio Telephone Company, (Cincinnati Final Decision), 58 Rad. Reg. 2d (P&F) 463, 470 n.13 (1985).

pending character issues is highly misleading. All of the cases cited by USCC (except one) involved disqualification of applicants on non-character grounds. Moreover, the one case cited by USCC which did involve a character issue, Beehive Cellular, Inc., ^{10/} did import a negative character finding from a prior proceeding to disqualify the applicant and thus is entirely inconsistent with USCC's premise. In Beehive, the Commission found, among other things, that Beehive's prosecution of its cellular application was "in violation of the terms of [a 1982] agreement" that prohibited Beehive from applying for further FCC authorizations ^{11/} - based on Commission findings that Beehive had been found "unqualified on character grounds to remain licensees of the Commission." ^{12/} Therefore, Beehive was disqualified from applying for a cellular license. ^{13/}

USCC also misleadingly contends that "[c]ommenters have not contested USCC's factual showing" and have "offered no substantive contest . . . " ^{14/} to USCC's Petition. LCGSA's Motion took the position that USCC's attempt to make an additional factual showing in the La Star case was so grossly untimely and jurisdictionally defective that LCGSA would not respond to USCC's voluminous proffer. However, LCGSA expressly reserved the right

^{10/} See USCC Reply at 5 n.3 citing Beehive, 2 FCC Rcd. 4505 (CCB 1987).

^{11/} Beehive, 2 FCC Rcd. at 4506.

^{12/} Beehive Telephone Co., Inc., MO&O, CC Docket No. 78-240, released April 14, 1986 at 1.

^{13/} Beehive was also disqualified on wireline eligibility grounds.

^{14/} USCC Reply at 1 and 2.

to respond in the event that the merits of USCC's Petition were entertained.

Finally, displaying the weakness of its position, USCC makes one "last gasp" suggestion:

While for the reasons USCC set forth above USCC submits that the Commission has full present authority to act favorably on USCC's petition now, if the Commission is of the view that the pendency of the La Star case in the Court of Appeals bars immediate action, USCC urges the Commission to ask that the Court remand the case to the Commission or that on some other basis the Court authorize the Commission to proceed with regard to Footnote 3. USCC would of course support and would be willing to join in such a request. ^{15/}

The idea that the FCC should seek a remand of the La Star case to eliminate footnote three irresponsible. ^{16/} There is no basis for a remand of a case that has undergone a full hearing and two decisions by the Commission. La Star has been found wireline ineligible on both occasions and both the ALJ and Commission observed that this was not a close case.

USCC's remand suggestion is equally transparent. If the case were to be voluntarily remanded, it is a virtual certainty (given the material contained in the USCC Petition) that USCC would attempt to supplement the record.

^{15/} USCC Reply at 5.

^{16/} Moreover, a remand of the Decision to eliminate footnote 3 would be completely inequitable. This case has been going on since 1983. During most of that time, LCGSA has not been able to compete on equal footing with its competitor in New Orleans because of the pendency of this dispute.

Thus, to remand La Star merely to eliminate footnote three makes little sense. Hopefully, the court appeal will be the final chapter in this long and tortured case.

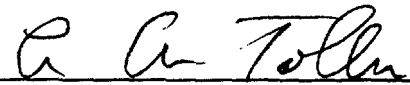
CONCLUSION

For the foregoing reasons, the USCC Petition is defective and should be summarily returned without consideration.

Respectfully submitted,

LOUISIANA CGSA, INC.

By:


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Luisa L. Lancetti

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Dated: March 19, 1993

CERTIFICATE OF SERVICE

I, Jo-Ann Grayton, a secretary in the law firm of
Wilkinson, Barker, Knauer & Quinn, hereby certify that I have
this __ day of March 1993 sent copies of the foregoing Reply to
the following by First Class United States Mail, postage prepaid:

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